



# Executive Order 12-04

## *Supporting and strengthening implementation of the state's wetland policy*

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### Environment and Conservation Sector Meeting

#### Minnesota Environmental Partnership, St. Paul, MN

#### Meeting Notes

October 15, 2012

Dave Weirens began the meeting by asking everyone in attendance to introduce themselves and briefly state why they came to today's meeting. He then reviewed the origination of Executive Order 12-04, its contents, and the process that is being used to comply with it. Mark Lindquist began the discussion of the Order's issues by reviewing the input that has been received at prior meetings.

#### Issue #1: De minimis Exemption.

- I heard there may have been support in Mankato for no de minimis.
- The Executive Order is looking for recommendations that "will improve wetland conservation." De minimis contradicts that goal.
- The 5% provision helps to prevent cumulative impacts in situations where there are numerous small lots.
- Northern counties get about ¼ acre (10,000 sq. ft.) right off the bat – that seems more than fair.
- There may be some ways to simplify de minimis, but it is so complicated because all of the special interests got their little "carve out." Many of them now seem to want simplification to the lowest common denominator rather than the highest.
- What are SWCD's suggestions to simplify de minimis?
- Maybe we should recommend increased funding for BWSR to give additional money to some of these northern counties (LOW, Koochiching, etc.) to help with implementation. Then those counties would have more staff to provide assistance to landowners who may not have the opportunity or money to hire consultants.
- Is there information on how much mitigation is required in northern counties? How much over the de minimis is this?
- The public should invest in local governments to serve small landowners, establish an ombudsman for small landowners.
- The Governor can provide the budget after the report is issued, more money and staff can go a long ways to addressing issues, including federal program delays.
- How many counties have wetland plans? Comprehensive Wetland Protection and Management Plans could be a good option to provide flexibility in the north.

### Issue #2: Alignment of Pre-Settlement Zones on Watershed Boundaries.

- Watersheds make more sense than counties.
- The St Croix Basin is a priority as it is in all three presettlement zones.
- There would be expected clarity or administrative efficiencies by changing boundaries.
- Counties may have some issues with moving towards watershed boundaries; would they lose authority under the watershed approach? It also could cause a detrimental backlash towards WCA.
- The watershed approach is imperative and it fits with the movement towards “one watershed – one plan.”
- We should move towards watershed-based implementation. We should be looking at watersheds and what is happening with groundwater.
- Climate change is real and there is a need to manage hydrology.
- 50-80% areas are lubrication between high and low regulation areas.
- Start with Bank Service Area boundaries: BSA 5 would be in >80% area, BSA 7 in <80% area, etc.
- There is also merit to looking at an 11-county metro area BSA (including Sherburne County). The forces that are affecting wetlands in those areas are development, so it makes sense to treat that area differently. A metro BSA also helps address the issues with differences in land values.

### Issue #3: Consistent Review, Approval and Implementation.

- Perhaps BWSR could work with the Corp so where counties are doing a good job, the Corps will write some type of “automatic” or general permit to accept what they are doing and reward good performance (delegation?). This would encourage other counties to follow. The political process tends to reward those that complain. Instead of responding to those who always have the complaint, reward those who do well. Shift staff to counties that need help. This idea is good in concept, but it depends on the details and the willingness of the Corps.
- The Corps is short of personnel, as are state and the counties. Have a memorandum of understanding for as long as standards are met, there would need to be an audit and accountability process.
- Corps delays result from Supreme Court decisions.
- Would the agricultural water quality certification process work here?
- A local wetland/watershed conservation plan should be at the heart of any potential general permit to local governments, followed by good oversight and accountability.
- We don’t trust DNR to effectively regulate and administer WCA for mining. Maybe it should be BWSR so DNR doesn’t look like they are promoting wetland destruction.
- Placing wetland mitigation in the hands of BWSR for all projects, including mining, will improve consistency and streamline the process.
- BWSR and Technical Evaluation Panels should have an oversight role for public transportation projects, and they should ask questions about public safety and wetland impact sequencing for road projects. BWSR has been doing a good job with the road bank.

- The issues raised by other stakeholders about the road mitigation program are insignificant. BWSR and WCA are doing its job. Adding context to the issues raised may be helpful (number of road projects compared to number where there is controversy, number over 10,000 sq. ft. vs. under, etc.). Keep in mind that it is common to only hear from the regulated parties but not from the public who benefits.
- Part of the reason we sometimes have government watching government is the lack of trust. Focus on where there can be trust, reward the good, and that's where things can be streamlined or where flexibility can be allowed.
- Can the Corps do a general permit with certain local governments? A GP may work well in some areas but not in others.
- The Corps has some type of conditions or framework for which road projects are handled in Wisconsin that could be looked at.
- Some that want a general permit may not like the conditions of the permit. At a minimum, conditions should include being up-to-date with a wetland management plan for the watershed and actually be implementing it with trained and knowledgeable staff.
- Swampbuster is not a good place to look for agreement/consistency. It's hard to talk about coordinating with Swampbuster when we don't even know what will be in the Federal Farm Bill. We don't know what the status of conservation compliance will be.
- Nowadays farms are multi-million dollar businesses that have the capabilities to address wetlands and mitigation requirements.
- Agricultural drainage and the connection to Swampbuster is a huge issue to national conservation groups.
- What would it take to assume 404? It would be a self-inflicted unfunded federal mandate.

Issue #4: Adequacy of Wetland Bank Program Funding.

- Agree with the need for a dedicated fund, but have concerns about the legislature raiding any such fund that would be established.
- The longer this discussion is delayed, the more vulnerable the state is to being forced to spend taxpayer dollars to fix problems.
- Fines collected now could be set aside to deal with problems that arise later.
- BWSR needs staff to monitor wetland banks.
- Impacts from private activities should be privately funded.
- The US Fish and Wildlife Service files its easements every year and takes people to court over violations; often has conflicts with NRCS.
- There may be risk involved with the dedicated fund concept (being raided by the legislature), but don't give up on the project. A strong case needs to be made, along with other allies (counties, conservation groups, etc.), to why it is necessary.
- Should bankers have to provide some kind of up-front insurance mechanism? Maybe cash in an outside account?
- BWSR should try to quantify or make some type of educated guess as to what the contingency risk is.

Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed.

- For mining projects, the concern is about impacts to both toxins and flow. In theory that is handled by DNR and MPCA, but we don't think that's happening adequately. If it was, we could move the wetland mitigation elsewhere. We just don't have the confidence in our regulatory community to do what needs to be done.
- Look at protecting critical onsite functions and local values in short supply (e.g. trout streams), and then maybe allow those that are not in short supply (wetlands) to go elsewhere.
- Mining in the NE is an area where stormwater runoff is a big issue along with impacting wetlands. Stormwater mitigation needs to be done no matter what.
- For certain things, project-specific wetland mitigation shouldn't be an option. Monetize the process, figure out the functional value of the lost wetland, charge that amount, and delegate to an outside agency to look at local needs but also to be able to jump to other watersheds, put towards implementation of the prairie plan, etc. as needed. We can measure the functional values of wetlands better now than we could in 1991. It is worth considering whether we need a completely new conceptual way of doing things.
- Certain impacts should not be required to do on-site mitigation, but instead monetize mitigation by identifying the functional value of wetlands and require payment, then other agencies determine how to use the resulting funds.
- We should consider having BWSR administer WCA across the state rather than having DNR administer it for mining impacts. Are the issues relating to the siting of mining mitigation projects really about DNR's administration of WCA for mining? Can we leave these types of decisions to the business who is looking for the low cost alternative?
- Mitigate for stormwater and water quality impacts on-site, and then allow them to go off-site and in a different BSA for the rest of it (wildlife habitat, etc.).
- Finding mitigation will not get easier, anything less than 1:1 will not be a good result.
- Maybe we could do a point system – get the highest points for mitigation in the local watershed, the next highest points in high priority areas, and the lowest points in areas like Aitkin County.
- A new system that is not based on replacement ratios should be part of the discussion.
- Trust is lacking and it bothers me when we can meet the law but have bad results. We have a road map with WCA, we should utilize it.
- WCA statute says to regulate on the basis of function and value, this turned into acres and type through implementation.
- Costs should not be an issue. When comparing the costs borne by the taxpayer in a St. Louis County watershed as a result of industry, I don't have a lot of sympathy for the mitigation costs incurred by mining companies. The basis for doing something different with wetlands in the NE should not be to lower the costs to mining, but rather needs to be on finding good mitigation.
- The focus should be on function and value, but from a practical standpoint this can be tough to determine. I'm skeptical about replacing an acre of degraded wetland with 1/8 acre. We should stay away from devaluing degraded wetlands.

- 100 acres of quality wetland replacement would be better than 500 acres of bad replacement – acres are not that relevant anymore. In addition, when you impact the really high quality wetlands, we will never get that function and value back from replacement wetlands. We just have to pick a number.
- Smaller wetlands can be better than larger wetlands; replacing wetlands surrounded by cropland elsewhere can result in a net gain.
- We need to stay away from ways to create lower value wetlands.
- We may know a lot less about wetland function and value than we think. Also, where science has a pretty good grasp of it, the public doesn't always recognize that. For example, small seasonal wetlands are important. Type 6 alder wetlands are looked at as a pain to many in the NE and they don't see their importance to stream health, etc.
- There has been a generational change, more understanding and support for wetlands than there used to be.

Issue #6: Strategic Use of Funding Sources to Achieve Continued Restoration of Drained Wetlands.

- The State should give a tax break or tax credit for the voluntary restoration of wetlands.
- We *have* to do strategic restoration of wetlands to improve water quality. Ultimately the cure for southern MN is getting wetlands and grasslands in strategic locations where they have the most need.

Other Issues.

- An increase in funding may be helpful to overcome many of the concerns we heard last legislative session. Reversing funding cutbacks would improve on-the-ground conservation delivery.
- Protecting wetlands is not in opposition to public opinion.
- We are cautious and nervous about additional amendments to what you will propose in your report to the Governor. We don't want to see sweeping, broad scale amendments.
- Once you open up WCA, you get on dangerous ground (e.g. potential changes to drainage law, etc.).
- For any potential legislative proposals, we recommend you get an author from both sides so if the proposal ends up changing too far one way or the other, either author could kill it. There is also a need to have authors who understand these issues and the corresponding policies.
- Is there a way to educate legislators on WCA and wetland issues?
- Pattern tiling, carp/bullhead intrusion and problems that need an action plan that can address low quality wetlands.
- The report on this Order should provide context to the issues; how many roads projects, how many are controversial, etc.?